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July 8, 2023

Mr. David J. Smith, Clerk of Court
U.S. Court of Appeals for the Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, GA 30303

**Re: *Eknes-Tucker v. Governor of the State of Alabama*, No. 22-11707
Rule 28(j) Supplemental Authority Letter:
L.W. v. Skrmetti, No. 23-5600 (6th Cir. July 8, 2023)**

Dear Mr. Smith:

The preliminary injunction Plaintiffs recently wrote this Court about in *L.W. v. Skrmetti* has been stayed by the Sixth Circuit. *See* No. 23-5600 (6th Cir. July 8, 2023) (“Op.”).

The challengers in *L.W.* brought the same two claims as Plaintiffs, substantive due process and equal protection. Op.3-4. The Sixth Circuit rejected both. Op.6-13. In a published opinion by Chief Judge Sutton, joined in full by Judge Thapar (Judge White concurred in part and dissented in part), the Court emphasized that “the conventional place for dealing with new norms, new drugs, and new technologies,” Op.6, is “the democratic process,” Op.14. “[N]ot every choice is for judges to make.” *Id.* “In this instance,” the Court found, “elected representatives made” “cost-benefit decisions and did not trigger any reasons for skeptical review in doing so.” Op.14.

Notably, the Court agreed that the equal protection challenge is controlled by *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228 (2022):

The Act bans gender-affirming care for minors of both sexes. The ban thus applies to all minors, regardless of their biological birth with male or female sex organs. That prohibition does not prefer one sex to the detriment of the other. The Act mentions the word “sex,” true. But how could it not? That is the point of the existing hormone treatments—to

help a minor transition from one gender to another. That also explains why it bans procedures that administer cross-sex hormones but not those that administer naturally occurring hormones. A cisgender girl cannot transition through use of estrogen; only testosterone will do that. A cisgender boy cannot transition through use of testosterone; only estrogen will do that. The reality that the drugs' effects correspond to sex in these understandable ways and that Tennessee regulates them does not require skeptical scrutiny. "The regulation of a medical procedure that only one sex can undergo does not trigger heightened constitutional scrutiny...."

Op.11 (cleaned up) (quoting *Dobbs*, 142 S. Ct. at 2245-46). And "Tennessee could rationally take the side of caution before permitting irreversible medical treatments of its children." *Id.*

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Respectfully submitted,
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CERTIFICATE OF COMPLIANCE

1. I certify that this document complies with the type-volume limitations set forth in Fed. R. App. P. 28(j) and 11th Cir. R. 28, I.O.P. 6. The document contains 343 words, including all headings, footnotes, and quotations, and excluding the parts of the brief exempted under Fed. R. App. P. 32(a)(7)(B)(iii).

2. In addition, this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed on July 8, 2023, using the CM/ECF Document Filing System, which will send notification of such filing to all noticed parties.

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